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ILLINOIS COMMERCE COMMISSION Springfield, Illinois

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Village of Tilton, Vermilion County, Illinois Petitioner,) HINDIS COMMERCE COMMIS) BAIL CAFETY SECTION
v.)
Norfolk and Southern Railroad and State of Illinois, Department of Transportation, Respondents.	,) Docket No. T00-0103)))
Petition for an Order regarding a separation of grades and construction of a bridge carrying 14 th Street (FAU 7010), Village of Tilton, Vermilion County, Illinois, I over the tracks of said Railway Company, apportioning cost thereof and directing an appropriate portion thereof to be borne by)))

MOTION TO STRIKE

the Grade Crossing Protection Fund.

NOW COMES Respondent State of Illinois, Department of Transportation ("Department"), by and through its attorney Lisa Madigan, Illinois Attorney General, and for its Motion To Strike states as follows:

- 1. On June 29, 2004, the Illinois Commerce Commission entered a Second Supplemental Interim Order in the above captioned matter, which was not circulated to the parties of record until July 20, 2004.
- 2. The Second Supplemental Interim Order was issued in violation of Title 83 Part 200 Section 200.820 of the Illinois Administrative Code.
- 3. More specifically, subsection (b) of Section 200.820 reads as follows:
 - "The Hearing Examiner shall issue a proposed order in any "Contested Case" ... if the proposed order is adverse to any party in the proceeding."
- 4. The Second Supplemental Interim Order does not embody the agreement reached by the parties to the detriment of the Illinois Department of Transportation.
- 5. The Second Supplemental Interim Order should be stricken from the record in its entirety due to the Illinois Commerce Commission's failure to follow and to completely disregard its established Rules of Practice.
- 6. If the Illinois Commerce Commission was unwilling to accept the terms of the agreement as presented by the parties, then the Illinois Commerce Commission's position should have been made clear to the parties of record and a hearing conducted.
- 7. Instead, to the surprise of all parties, the Illinois Commerce Commission issued an order (as opposed to a tentative order), which did not accurately reflect the parties' agreement nor provide the parties with a reasonable opportunity to respond.

WHEREFORE, the State of Illinois, Department of Transportation, respectfully requests that the Illinois Commerce Commission grant its Motion and strike from the record the Second Supplemental Interim Order dated June 29, 2004 in its entirety and in its place issue a proposed order incorporating the parties' agreement, or alternatively, set this matter for hearing on the issue of cost allocation.

Respectfully Submitted, Illinois Department of Transportation

By: Lisa Madigan

Illinois Attorney General

Stacey C. Holld

Special Assistant Attorney General

Dated:

Illinois Department f Transportation 2300 South Dirksen Parkway, Rm. 300

Springfield, Illinois 62764

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STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION

Village of Tilton, Vermilion County, Illinois Petitioner, v.)))
Norfolk and Southern Railroad and State of Illinois, Department of Transportation, Respondents.)) Docket No. T00-0103))))))))
Petition for an Order regarding a separation of grades and construction of a bridge carrying 14 th Street (FAU 7010), Village of Tilton, Vermilion County, Illinois, I over the tracks of said Railway Company, apportioning cost thereof and directing an appropriate portion thereof to be borne by the Grade Crossing Protection Fund.	

NOTICE OF FILING

TO: Thomas W. Ambler, NS
Robert B. Andrews, Eng.
Patricia D. Barksdall, CSX
Richard E. Boyle, NS
Paul C. Carine, CSX Eng.
James C. Cook, Atty.
Neil F. Flynn, Atty.
W.C. Johnson, NS
Kenneth W. Mettler, CSX
Thomas L. Overmyer
Daniel P. Schuering, Atty.
Conrad Wantland, Village Pres.
Connie S. Weddle, Village Clerk

PLEASE TAKE NOTICE that I have this 12th day of August, 2004 forwarded to Mr. Dave Lazarides, Director of Processing, Transportation Division, of the Illinois Commerce Commission, Springfield, Illinois, for filing in the above matter, Department's Motion To Strike, a copy of which is attached hereto and hereby served upon you.

Stacey C. Hollo

Special Assistant Attorney General 2300 South Dirksen Parkway, Rm 300

Springfield, Illinois 62764

(217) 782-0692

Counsel for the Illinois

Department of Transportation

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was served upon the addresses listed below by mailing a true and correct copy via first class mail, postage pre-paid and depositing the same in the United States Mail, Springfield, Illinois, this 12th day of August 2004:

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